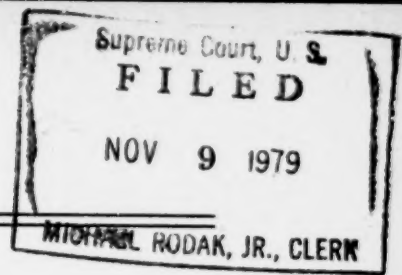


APPENDIX



IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1845

STATE OF ILLINOIS,

Petitioner

vs.

JOHN M. VITALE,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 11, 1979
CERTIORARI GRANTED OCTOBER 1, 1979

IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

STATE OF ILLINOIS,

Petitioner

vs.

JOHN M. VITALE,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF ILLINOIS

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**CHRONOLOGICAL LIST OF
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WERE FILED, HEARINGS HELD,
ORDERS ENTERED, AND
REVIEWING COURT OPINIONS AND
ORDERS ENTERED.**

- December 24, 1974—Petition for Adjudication of Wardships filed
- February 27, 1975—Motion for Discharge filed on behalf of John Vitale
- April 4, 1975—People's initial response to motion for discharge
- May 5, 1975—People's memorandum in support of their response, filed
- May 5, 1975—Memorandum in support of discharge, filed
- June 9, 1975—Order of the Honorable Joseph C. Mooney dismissing the Petition for Adjudication of Wardship
- June 20, 1975—Notice of Appeal on behalf of the People, filed
- December 30, 1976—Opinion of the Appellate Court of Illinois, First District, affirming the dismissal
- April 3, 1978—Opinion of the Supreme Court of the State of Illinois affirming the dismissal
- July 14, 1978—First Petition for the Writ of Certiorari filed by the People of the State of Illinois (No. 78-2)
- November 27, 1978—Order of the Supreme Court of the United States granting Certiorari, and remanding to the Supreme Court of Illinois for a determination of whether its decision was upon constitutional grounds
- March 22, 1979—Certification by the Supreme Court of Illinois that its determination was on such grounds
- June 11, 1979—Second Petition for Certiorari filed on behalf of the People of the State of Illinois (No. 78-1845)
- October 1, 1979—Writ of Certiorari granted by the Supreme Court of the United States

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, JUVENILE DIVISION

In the interest of

JOHN M. VITALE

A Minor

No. 74J19898

PETITION FOR ADJUDICATION OF WARDSHIP

I, Captain Robert Zeilenga, on oath state* on information and belief:

1. John M. Vitale is a male minor born on April 23, 1958, who resides or may be found in this county at 38 Chippewa Drive, Thornton, Illinois.

2. The names and residence addresses of the minor's parents, legal guardian, custodian, and nearest known relative are:

	Name	Residence	City and State
Father			
Mother			
Legal guardian	Mr. Clement Viater	38 Chippewa Drive	Thornton, Illinois
Custodian			
Nearest known relative			

The minor and the persons named in this paragraph are designated respondents.

3. The minor is *delinquent*, otherwise in need of supervision, neglected or dependent by reason of the following facts:

Each of the paragraphs set forth on Page 2 hereof is hereby made a part hereof.

4. The minor is not detained in custody.

5. A detention hearing has been set for 1-2-75.

* If any facts are not known, so state in the appropriate spaces.

6. It is in the best interests of the minor and the public that the minor be adjudged a ward of the court.

I ask that the minor be adjudged a ward of the court and for other relief under the Juvenile Court Act.

Petitioner

Signed and sworn to before me

December 24, 1974,

Notary public OR CLERK OF
COURT

Name

Attorney for

Address

City

Telephone

IN THE INTEREST OF John M. Vitale, a minor No. 74J19898

1. In that John M. Vitale has, on or about November 20, 1974 at Cook County, Illinois committed the offense of Involuntary Manslaughter in that he without lawful justification, while recklessly driving a motor vehicle caused the death of George Kech, in violation of Chapter 38, Section 9-3(a), Illinois Revised Statutes.

2. In that John M. Vitale has, on or about November 20, 1974 at Cook County, Illinois committed the offense of Involuntary Manslaughter in that he without lawful justification, while recklessly driving a motor vehicle caused the death of Carrilynn Christakos, in violation of Chapter 38, Section 9-3(a), Illinois Revised Statutes.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—JUVENILE DIVISION

In the Interest of

JOHN M. VITALE,

A Minor

No. 74 J 019898

Filed February 27, 1975

MOTION FOR DISCHARGE DUE TO VIOLATION OF
STATUTORY OR CONSTITUTIONAL
DOUBLE JEOPARDY

Now comes the minor, JOHN M. VITALE, by his attorney, LAWRENCE G. DIRKSEN, and moves for discharge because the prosecution is barred due to the minor having been tried on December 23, 1974, in the Circuit Court of Cook County in South Holland, Illinois, for the offense of Failure to Reduce Speed to Avoid an Accident, Chapter 95½, Section 11-601(a) Illinois Revised Statutes, Complaint No. X2-480-263, and the present charge is barred by Illinois Revised Statutes, Chapter 38 C, Sections 3-3 and 3-4. In support thereof, it is stated as follows:

1. The minor, JOHN M. VITALE, was arrested on November 20, 1974, and charged with violation of Illinois Revised Statutes, Chapter 95½, Section 11-601 (a) Failure to Reduce Speed to Avoid an Accident, Case No. X2-480-263. Subsequently a Petition for Adjudication of Wardship was filed in the Circuit Court of Cook County, Illinois, Juvenile Division, charging the minor with a violation of Illinois Revised Statutes, Chapter 38, Section 9-3(a), Involuntary Manslaughter (two counts). The same arrest formed the basis for all three charges. The time and place of occurrence were the same. The transaction was the same. The pertinent portions of each complaint are set forth below:

Complaint No. X2-480-263—Failure to Reduce Speed to Avoid an Accident.

Petition for Adjudication of Wardship—In that JOHN M. VITALE has, on or about November 20, 1974, at Cook County, Illinois, committed the offense of Involuntary Manslaughter in that he without lawful justification, while recklessly driving a motor vehicle caused the death of GEORGE KECH, in violation of Chapter 38, Section 9-3(a), Illinois Revised Statutes.

In that JOHN M. VITALE has, on or about November 20, 1974, at Cook County, Illinois, committed the offense of Involuntary Manslaughter in that he without lawful justification, while recklessly driving a motor vehicle caused the death of CARRILYNN CHRISTAKOS, in violation of Chapter 38, Section 9-3(a), Illinois Revised Statutes.

2. On December 23, 1974, the first Complaint, charging violation of Section 11-601(a) Chapter 95½, Illinois Revised Statutes, the minor proceeded to trial before The Honorable James Oakey in the Circuit Court of Cook County at South Holland, Illinois, and the minor was found guilty and a fine assessed against him.

3. The prosecution and/or conviction under the first Complaint is a bar to prosecution under the present Petition charging the minor with two counts of Involuntary Manslaughter.

4. Section 3-3, Chapter 38, Illinois Revised Statutes, provides that when the same conduct of a defendant may establish the commission of more than one offense, and that several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution unless the court orders that one or more such charges be tried separately.

5. Section 3-4(b) (1), Chapter 38, Illinois Revised Statutes, states that, "the prosecution is barred if the defendant was formally prosecuted for a different offense, or for the same offense based upon different facts, if such former prosecution:

resulted in either a conviction or an acquittal, and the subsequent prosecution is for an offense of which the defendant could have been convicted on the former prosecution; or was for an offense which the defendant should have been charged on the former prosecution, as provided in Section 3-3 of this Code (unless the Court ordered a separate trial of such charge); or was for an offense which involved the same conduct, unless each prosecution required proof of a fact not required on the other prosecution, or the offense was not consummated when the formal trial began."

6. The State's Attorney is, therefore, barred from prosecuting the present charges of Involuntary Manslaughter, since several offenses that arise out of the same conduct must be prosecuted in a single prosecution, and for the further reason that the minor herein has already been convicted of an offense which involves the same conduct in the instant case.

WHEREFORE, the minor, JOHN M. VITALE, by and through his attorney, LAWRENCE G. DIRKSEN, respectfully requests an Order dismissing the Petition and discharging the minor on the ground that prosecution thereof is violative of statutory and/or constitutional double jeopardy.

LAWRENCE G. DIRKSEN, Attorney
for JOHN M. VITALE, a minor

Lawrence G. Dirksen
Attorney at Law
3612 West Lincoln Highway
Olympia Fields, Illinois 60461
(312) 481-7400

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY—
COUNTY DEPARTMENT—JUVENILE DIVISION

In The Interest Of }
JOHN M. VITALE } Juvenile No. 74J 019898
A Minor }

ANSWER TO MOTION FOR DISCHARGE DUE
TO VIOLATION OF STATUTORY OR
CONSTITUTIONAL DOUBLE JEOPARDY

Now comes State's Attorney Bernard Carey through his Assistant State's Attorney, Marva Cohen to answer the motion for discharge alleging that the petition before the Juvenile Court alleging that John Vitale is a Delinquent minor (Ill.Rev.Stat.Ch.37 § 702-2) is barred because the minor had been tried on December 23, 1974 in the Circuit Court of Cook County, South Holland, Illinois for the offense of failure to obey the General Speed Restriction (Ill.Rev.Stat.Ch.95½ § 11-601 (a))

It is the States position that there is no bar to this prosecution. In support thereof it is stated as follows:

1. Respondent cited Ill.Rev.Stat.Chap.38 § 3-3 as support for his position that the Petition for Delinquency is barred by the prior traffic court proceeding. The pertinent part of section § 3-3 (b) requires that the several offenses be within the jures of a single court for there to be a bar.

For the respondent to sustain this position he must show that there was juris in the South Holland Court to conduct a hearing on a Petition for the adjudication of wardship alleging the minor is a delinquent in Violation of Illinois Revised Stat.Ch.37 § 702-2. This he has not done. Juris over a minor

always resides in the Juvenile Court (Ill.Rev.Stat.Ch.37 § 702-7 (1)) unless specifically exempted by statute as it is in the case of Traffic Offenses (Ill.Rev.Stat. Ch.37 § 702-7(2)), by motion of respondent (Illinois Revised Statutes Ch.37 § 702-7(5), or on motion of the State's Attorney (Ill.Rev.Stat.Ch.37 § 702-7 (3)).

As Illinois Rev.Stat.Ch.37 § 702-7(2) clearly exempts prosecution for traffic offenses from procedure under the Juvenile Court Act it is clear that Traffic Court had proper juris as to the traffic offense and Juvenile Court has proper juris as to the Delinquency matter.

Ch.38 § 3-3 does not apply here as construed by the respondent because as indicated supra neither court, Traffic Court or Juvenile Court, had proper juris for all the alleged offenses arising out of the occurrence on January 20, 1974 (see Ch.38 § 3-3 (a))

In this case the State's Attorney did not elect to transfer the underlying criminal offenses to the juris of the Criminal Courts via 702-transfer and there was no judicial determination to that affect.

Re: Rahn-Ill.3d-319 N.E.2d 787 (1974) (cite) held that § 702-7 forbids criminal prosecution of a child under 17 without a just determination whether the minor is to be treated as an adult. In Rahn, a 16 year old was indicted, tried and convicted of arson. The Illinois Supreme Court reversed the conviction stating that the conviction would not stand where the State's Attorney did not petition Juvenile Court to prosecute defendant as an adult.

WHEREFORE, the state petitions this Court to deny respondent's motion.

BERNARD CAREY,
State's Attorney of Cook County

By MARVA COHEN,
Marva Cohen,
Assistant State's Attorney,
Juvenile Division

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT JUVENILE DIVISION

In The Interest Of

JOHN M. VITALE

A Minor

Juvenile No. 74-019898

REBUTTAL: MOTION FOR DISCHARGE
DUE TO VIOLATION OF STATUTORY
OR CONSTITUTIONAL DOUBLE JEOPARDY

To rebut adequately issues raised by the minor respondent, John Vitale, the state presents its arguments in the alternative.

I THE TRAFFIC OFFENSE FOR WHICH THERE WAS
A CONVICTION IS NOT A LESSER INCLUDED OF-
FENSE TO THE PENDING JUVENILE PETITION.

A. Vitale has argued that his failure to obey the General Speed Restrictions (Ill. Rev. Stat., ch 95½, § 11-601 (a)) is a lesser included offense to the pending petition for the Adjudication for Wardship (Ill. Rev. Stat., ch. 37, 702-2) based upon the underlying offense of Involuntary Manslaughter (Ill. Rev. Stat., ch 38, 9-3). Ill. Rev. Stat., ch. 38, 2-9 defines included offense:

... (A)n offense which ... (i)s established by proof of the same or less than all of the facts. ... than that which is required to establish the commission of the offense charged. ...

There is no question that these two offenses arose at the same point in time. However, there is no showing that the same conduct gave rise to the separate offenses, or that the same proof would be required in both cases.

John Vitale was driving at a speed unreasonable for conditions as determined by the finding of guilt in the South Holland court; the exact speed is irrelevant. The question of speed, however, is not determinative of the cause of death of the children. An admission contained in the police report indicates Vitale had looked away. There are indications of brake failure.

The proof required for involuntary manslaughter is recklessness and not necessarily the recklessness involved in speeding. The speed may not have been the cause of the subsequent deaths and the speed per se is not employed as a "but for" test of recklessness which lead to the two deaths. Recklessness may have consisted of other aspects of the respondents behavior as noted above.

B. Ill. Rev. Stat., ch. 38, § 3-3 does not apply in this case.

As the state discussed in its prior answer there is not a single jurisdiction in which these matters need be heard. Further, although these two offenses occurred close in time the Adjudication of Delinquency pending in Juvenile Court requires proof of facts not required for the other prosecution.

C. Ill. Rev. Stat., ch. 38, § 3-4 does not apply in this case.

The cases cited by Vitale are easily distinguishable from the situation before the Court. Cited are *People v. King*, 275 N.E. 2d 213 (1971), *People v. Dugan*, 305 N.E. 2d 308 (1973), & *People v. Brown*, 306 N.E. 2d 561 (1973).

In *King* the defendant was tried for indecent conduct (a municipal offense). Evidence was heard and jeopardy had attached. The court held a subsequent prosecution for deviate sexual assault was barred because the State admitted that the same conduct constituted the two charges.

In *Dugan* the defendant was indicted and tried for murder but convicted of the lesser included offense of manslaughter. The conviction was an implied acquittal of the murder charge and further prosecution was barred.

In both above cited cases the court was clearly dealing with lesser included offenses unlike the contention of the current case that a lesser included offense is not involved.

The significance of the citation by the respondent to *Brown* is unclear to the State since its holding is that jeopardy does not attach at a preliminary hearing.

The defendant is *Waller v. Florida*, 90 S. Ct 1184 (1971) had removed a canvas mural from the wall inside city hall and had carried it through the streets. During a scuffle with police the mural was damaged. After being convicted of violating two city ordinances (destruction of city property and disorderly breach of the peace) he was tried and convicted of violating the state law of grand larceny. The court made an *assumption* that the ordinance violated was a lesser included offense of the felony charge and stated the second trial constituted double jeopardy. It is the State's position that such an assumption can not be made in this case.

In the case of *Ashe v. Swenson*, 397 U.S. 436 (1970) the court held that the defendant who had been acquitted on a charge of robbery could not later be tried on a robbery charge growing out of the same incident and involving a second victim since the only issue in dispute during the prior proceeding was whether the defendant had been one of the robbers. The jury had found he was not. The court thus held the State was collaterally estopped from re-adjudicating a critical evidentiary issue for which there had been a prior determination by the trier of fact which lead to an acquittal.

The issues adjudicated by the South Holland are not those to be adjudicated in the pending juvenile matter. The South Holland court had no jurisdiction over the Delinquency matter before the Juvenile Court and could not have adjudicated them.

II. IN THE ALTERNATIVE, IF THE TRAFFIC OFFENSE IS HELD TO BE A LESSER INCLUDED OFFENSE TO THE PENDING JUVENILE PETITION, THE EARLIER CONVICTION IS VOID FOR LACK OF JURISDICTION.

If the court should find the offense of failure to obey the General Speed Restrictions is a lesser included offense the court must find the South Holland prosecution void for lack of jurisdiction.

In re Rahn, ____ Ill. 3d ____, 319 N.E. 2d 787 (1974) held that Ill. Rev. Stat, ch. 37, § 702-7 forbids criminal prosecution of a child under 17 years without a judicial determination whether the minor is to be treated as an adult. In *Rahn*, a 16 year old was indicted, tried and convicted of arson. The Illinois Supreme Court reversed the conviction stating that the conviction would not stand where the States Attorney did not petition the Juvenile Court to prosecute defendant as an adult.

Rahn stands for the proposition that there is original and exclusive jurisdiction in the juvenile court. A conviction is to be reversed if it does not originate in Juvenile Court. There is no question that the South Holland court had no jurisdiction over the Delinquency petition and if violation of Ill. Rev. Stat., ch 95½ § 11-601 (a) is a lesser included offense the South Holland court had no jurisdiction over that matter either.

Accordingly, the State contends that if the traffic offense is held to be a lesser included offense the South Holland courts adjudication is a nullity for want of jurisdiction, must be vacated and both matters must be heard before the Juvenile Court.

Respectfully Submitted,

Marva Cohen
Assistant State's Attorney
Juvenile Court
1100 S. Hamilton
Chicago, Illinois 60612

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—JUVENILE DIVISION

In the Interest of

JOHN M. VITALE,
A Minor

No. 74 J 019898

A REPLY TO STATE'S ANSWER TO MOTION
FOR DISCHARGE

Lawrence G. Dirksen
Attorney at Law
3612 West Lincoln Highway
Olympia Fields, Illinois 60461
(312) 481-7400

STATEMENT OF FACTS

On November 20, 1974, JOHN M. VITALE, the minor herein, was returning to Thornwood High School shortly after noon. At the intersection of 170th and Ingleside Avenue, the car that he was operating struck two children, both of whom subsequently died.

The minor, JOHN M. VITALE, on the above-mentioned date was charged with the offense of "Failure to Reduce Speed to Avoid An Accident," in violation of 11-601 (a), Case No. X2-480-263. Subsequently, a Petition for Adjudication of Wardship was filed in the Circuit Court of Cook County, Illinois, Juvenile Division, charging the said minor with violation of Illinois Revised Statutes, Chapter 38, Section 9-3 (a) Involuntary Manslaughter (two counts).

On December 23, 1974, a bench trial before the Honorable James Oakey was held in the Circuit Court of Cook County at South Holland, Illinois, on the complaint charging the minor with violation of Sec. 11-601 (a) Chapter 95½. The minor was found guilty and a fine assessed against him. (See certified copy of ticket and order.)

The individual who signed the traffic complaint against the minor is the same person who signed the Petition for Adjudication of Wardship, namely, Captain Robert Zeilenga, of the South Holland, Illinois, Police Department.

* * * * *

DISCUSSION

I. RESPONDENT'S CONVICTION OF "FAILURE TO REDUCE SPEED TO AVOID AN ACCIDENT" CONSTITUTED PRIOR JEOPARDY, PRECLUDING SUBSEQUENT PROSECUTION FOR INVOLUNTARY MANSLAUGHTER ARISING FROM THE SAME INCIDENT.

The People, in their Answer to Respondent's Motion for Discharge, have completely ignored the fundamental issue before the Court, and that is whether prosecution of Respondent in Juvenile Court for the two counts of Involuntary Manslaughter is barred due to the fact that he has already been tried and found guilty and sentenced on the charge of "Failure to Reduce Speed to Avoid An Accident," a charge that arose out of precisely the same transaction that is the basis of the Petition for Adjudication of Wardship now before this Court.

The People have neither denied nor taken issue with the following facts:

- a. the same arrest formed the basis for the charge of Failure to Reduce Speed to Avoid an Accident and the two counts of Involuntary Manslaughter, and
- b. the exact time and place of the occurrence for the multiple charges were the same, and
- c. there was no clearly divisible conduct, i.e., all charges grew out of the same transaction.

The only argument made by the People is that the Juvenile Court is precluded from hearing traffic charges and, therefore, that the minor had to be tried in a different court for the traffic offense. This, of course, is neither the law nor is it responsive to the issue of double jeopardy. Chapter 37, Sec. 702-7, *Illinois*

Revised Statutes, merely allows a minor to be prosecuted in a court other than Juvenile Court for a traffic offense or an offense punishable by fine only. The Statute uses the word "may", but it in no way strips the Juvenile Court of jurisdiction over such cases. The State suggests that these multiple prosecutions are permissible because the person charged is a minor. On the contrary, the *Juvenile Court Act*, Chapter 37, Sec. 701-2 (3) (a), *Purpose and Policy*, states:

"In all procedures under this Act the procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors."

The above section not only affords minors the same procedural rights as adults but even greater rights. There is, therefore, just one question before this Court and that is whether or not the State is barred from proceeding on the present Petition on grounds of double jeopardy.

A. "A PROSECUTION IS BARRED IF THE DEFENDANT WAS FORMERLY PROSECUTED FOR A DIFFERENT OFFENSE, OR FOR THE SAME OFFENSE BASED UPON DIFFERENT FACTS, IF SUCH FORMER PROSECUTION:

(1) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for an offense of which the defendant could have been convicted on the former prosecution; or was for an offense with which the defendant should have been charged on the former prosecution, as provided in Sec. 3-3 of this Code (unless the court ordered a separate trial of such charge); or was for an offense which involves the same conduct, unless each prosecution requires proof of a fact not required on the other prosecution, or the offense was not consummated when the former trial began.

Illinois Revised Statutes, Chapter 38, Sec. 3-4 (b) (1).

The above Statute is a bar to the prosecution under the present Petition. The Courts of this state, in interpreting the above statute, have made it abundantly clear that a subsequent prosecution for an offense arising out of the same conduct that formed the basis for the initial prosecution is barred on grounds of double jeopardy. See *People v. King*, 275 N.E. 2d 213, (1971) and *People v. Brown*, 306 N.E. 2d 561 (1973). Also, in *People v. Dugan*, 305 N.E. 2d 308 (1973), the Court found that Sec. 3-4, Chapter 38, *Illinois Revised Statutes* provides that "a conviction of an included offense is an acquittal of the offense charged; and we have no alternative but to find that Defendant's original plea of guilty to the lesser included offense of involuntary manslaughter constitutes an acquittal of the original charge of murder, and any further prosecution therefore is barred." In the present case, both of the foregoing sets of circumstances exist the "same transaction" rule and the "conviction of an included offense" standard.

B. A SECOND PROSECUTION OF RESPONDENT CONSTITUTES DOUBLE JEOPARDY AND IS VIOLATIVE OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

To argue Respondent's Motion for Discharge successfully, one need only refer to *Waller v. Florida*, 90 S. Ct. 1184 (1970). This case alone is controlling, in spite of or in addition to any statutory grounds foreclosing multiple prosecutions. The United States Supreme Court, with Chief Justice Burger writing the opinion, held that a defendant who had been convicted under a city ordinance for destruction of city property and disorderly conduct could not be tried by the State of Florida on a charge of grand larceny based on the *same acts* as were involved in violation of the ordinance. It was held that the second trial constituted double jeopardy and the double jeopardy provisions of the Fifth Amendment are applicable to the States. The essence of the holding was that since all charges

WHEREFORE, the minor, JOHN M. VITALE, by and through his attorney, LAWRENCE G. DIRKSEN, respectfully requests an Order dismissing the Petition and discharging the minor on the ground that prosecution thereof is violative of statutory an/or constitutional double jeopardy.

Lawrence G. Dirksen
Attorney at Law
3612 West Lincoln Highway
Olympia Fields, Illinois 60461
(312) 481-7400

PLANNING ACCIDENT REPORT				REPORT NUMBER			
ON THE DAY OF THE ACCIDENT				CLASS			
INVESTIGATOR				INVESTIGATOR			
1. Vehicle				2. Driver			
3. Passenger				4. Other			
5. Location				6. Date			
7. Time				8. Weather			
9. Road				10. Other			
11. Vehicle				12. Driver			
13. Passenger				14. Other			
15. Location				16. Date			
17. Time				18. Weather			
19. Road				20. Other			
21. Vehicle				22. Driver			
23. Passenger				24. Other			
25. Location				26. Date			
27. Time				28. Weather			
29. Road				30. Other			
31. Vehicle				32. Driver			
33. Passenger				34. Other			
35. Location				36. Date			
37. Time				38. Weather			
39. Road				40. Other			
41. Vehicle				42. Driver			
43. Passenger				44. Other			
45. Location				46. Date			
47. Time				48. Weather			
49. Road				50. Other			
51. Vehicle				52. Driver			
53. Passenger				54. Other			
55. Location				56. Date			
57. Time				58. Weather			
59. Road				60. Other			
61. Vehicle				62. Driver			
63. Passenger				64. Other			
65. Location				66. Date			
67. Time				68. Weather			
69. Road				70. Other			
71. Vehicle				72. Driver			
73. Passenger				74. Other			
75. Location				76. Date			
77. Time				78. Weather			
79. Road				80. Other			
81. Vehicle				82. Driver			
83. Passenger				84. Other			
85. Location				86. Date			
87. Time				88. Weather			
89. Road				90. Other			
91. Vehicle				92. Driver			
93. Passenger				94. Other			
95. Location				96. Date			
97. Time				98. Weather			
99. Road				100. Other			

Department of Police

VILLAGE OF SOUTH HOLLAND, ILL.
John Rinkema, CHIEF

Page 2

Vehicle was westbound in the inner lane of 170th St. At Ingleside Ave. the children were in a market school crosswalk attempting to cross 170th St. from south to north. There was a school crossing guard on duty at that location, (Mrs. Arlene Lucas) and she was in full uniform in the middle of 170th with a stop sign displayed. She motioned for the children to come across. The vehicle struck both children as they ran across the street and in front of the vehicle.

Investigation revealed that the vehicle left 68 feet of skid marks to the east side of the crosswalk then continued for another 58 feet (126 ft. total) before coming to a stop. Victim Kech was caught in the under carriage of the car and dragged approximately 50 feet before the car stopped. Victim Christakos was thrown approximately 80 feet from the point of impact and was lying on the north curb. Point of impact is established to be in the inner lane approximately 13 feet south of the north curb and in or just outside of the west line of the crosswalk.

Victim Kech was pronounced dead at 12:45 PM by Dr. Orcutt at Ingalls Memorial Hospital, Harvey, Illinois. Coroners office notified and permission to move the body by Dep. Coroner Tragarz at 2:10 PM.

Driver of the vehicle stated that he was traveling westbound on 170th St. in the inside lane and was going about 25 MPH. His attention was diverted to the left and when he looked back again he saw the crossing guard in the middle of 170th St. holding a stop sign. He immediately applied his brakes and then saw the two children run in front of him. He stated he could not stop his vehicle in time to avoid a collision.

See Page 3 for diagram

2 for details

REFER TO UNITS BY NUMBERS

<p>1. DRIVER'S ACCOUNT</p> <p>1. Name of Driver: []</p> <p>2. Date of Birth: []</p> <p>3. Address: []</p> <p>4. Phone: []</p> <p>5. Other: []</p>		<p>2. WITNESSES</p> <p>1. Name: []</p> <p>2. Address: []</p> <p>3. Phone: []</p> <p>4. Other: []</p>		<p>3. VEHICLE INFORMATION</p> <p>1. Make/Model: []</p> <p>2. Year: []</p> <p>3. Color: []</p> <p>4. License: []</p> <p>5. Other: []</p>	
<p>4. ROAD CHARACTER</p> <p>1. Street Name: []</p> <p>2. Direction of Travel: []</p> <p>3. Lane Width: []</p> <p>4. Shoulder Width: []</p> <p>5. Other: []</p>		<p>5. WEATHER</p> <p>1. Temperature: []</p> <p>2. Humidity: []</p> <p>3. Wind: []</p> <p>4. Other: []</p>		<p>6. ROAD SURFACE COND.</p> <p>1. Dry: []</p> <p>2. Snow/Ice: []</p> <p>3. Other: []</p>	
<p>7. ROADWAY DEFECTS</p> <p>1. Shoulder: []</p> <p>2. Shoulder Slope: []</p> <p>3. Holes: []</p> <p>4. Loose Material: []</p> <p>5. Other: []</p>		<p>8. VISION OBSCURED</p> <p>1. Fog: []</p> <p>2. Rain: []</p> <p>3. Snow: []</p> <p>4. Other: []</p>		<p>9. VEHICLE CONDITION</p> <p>1. Engine: []</p> <p>2. Brakes: []</p> <p>3. Tires: []</p> <p>4. Other: []</p>	
<p>10. TRAFFIC CONTROL</p> <p>1. Stop Sign: []</p> <p>2. Stop and Go Light: []</p> <p>3. Other: []</p>		<p>11. MISCELLANEOUS</p> <p>1. Other: []</p> <p>2. Other: []</p> <p>3. Other: []</p>		<p>12. SPECIAL STUDIES</p> <p>1. Yes: []</p> <p>2. No: []</p>	

Department of Police

VILLAGE OF SOUTH HOLLAND, ILL.
John Rinkema, CHIEF

The crossing guard, Mrs. Lucas, stated that she had looked to the east and did not see a car coming, she looked to the west and saw a car about a block away. She walked out into 170th St. from the southwest corner of the intersection with her stop sign raised above her head. She made sure that the vehicle coming from the west stopped and she then motioned for the children to cross. They started running across and she heard tires squeal and the car came past her and struck the children.

During the investigation of skid marks, it was noted that the vehicle left no skid marks from the left front tire. It was suspected that the brakes may have been faulty. The car was taken into a testing lane, Weltmeyer & Son, Harvey, Illinois and a test was performed. This test indicated that the right front wheel had 100% braking power, left front had 70%, left rear 70% and the right rear 45%.

In an effort to establish the speed of the vehicle, tests were made with the vehicle on 170th St. at 4 PM 11-20-74 while the road conditions remained the same. The speed was established with radar and the following speeds and skid distances were recorded 30 MPH—35 ft. 40 MPH—57 ft. 51 MPH—115 ft. An attempt was also made to compute the speed of the vehicle by using the nomograph. By computing the speed in this manner it indicated that the vehicle was traveling approximately 52 MPH. It is therefore the opinion of the investigating officer that the vehicle was traveling in excess of 50 MPH.

The description of the location and streets is as follows: 170th St. is a 40 ft. wide 4 lane marked with a double yellow center line and spaced white lane lines, asphalt paved. The crosswalk is marked, by 2 white lines, 6 feet wide and runs from the west sidewalk along Ingleside Ave., NNWest to a driveway apron at 912 E. 170 St.

Department of Police

VILLAGE OF SOUTH HOLLAND, ILL.
John Rinkema, CHIEF

The driver stated that he entered westbound 170th St. at Prince Drive. A description of the traffic signs westbound from Prince Dr. to the crosswalk is as follows: a 35 MPH speed limit sign at Prince Drive, 1¼ blocks west, a written official school speed limit sign 20 MPH, ½ block west an official "Visual type" school zone ahead, at University St., school speed limit 20 MPH, at Greenwood Ave. a market crosswalk and official visual school crosswalk sign, just west of Greenwood a blind Person Crossing sign at Ellis Ave. an official school zone 20 MPH sign and then it is 460 feet to the crosswalk. There is a total of 7 official speed warning signs from Prince Drive to the crosswalk.

Further interviews will be attached to this report in statement form.

Additional information: November 21, 1974 2:00 PM Ingalls Memorial Hospital the SHPD that the Chiristakos girl had died. She was pronounced dead at 1:05 PM November 21, 1974 by Dr. Tobias. Coroners office notified at 3:45 PM date. Dept. Coroner Flanagan gave permission to move the body to funeral home of the families choice.

(Diagram of scene of collision drawn by officer
omitted in printing.)

United States of America

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

PLEAS, before the Honorable JOSEPH C. MOONEY one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at the Court House, in the City of Chicago, in said County, and State, on June 9th, in the year of our Lord, one thousand nine hundred and seventy five and of the Independence of the United States of America, the one hundred and ninety eight.

PRESENT:—The Honorable JOSEPH C. MOONEY
Judge of the Circuit Court of Cook County.

BERNARD CAREY, State's Attorney.

**RICHARD J. ELROD, Sheriff of Cook
County.**

Attest: MORGAN M. FINLEY, Clerk

BE IT REMEMBERED, that heretofore, to-wit: On the 9th day of June A.D. 1975, the following among other proceedings were had and entered of record in said Court to-wit:

JOHN M. VITALE

74 J 19898

PRIVATE ATTORNEY PRESENT; MOTION
RESPONDENT SUSTAINED
PROSECUTION BARRED; PETITION
DISMISSED; CASE CLOSED.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

I, MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order had and entered of record on the 9th day of June A. D. 1975 in a certain cause lately pending in said Court, on the juvenile side thereof,

between Circuit Court of Cook County,
Illinois in the interest of:

JOHN M. VITALE

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the
Seal of said Court, at Chicago, in said
County, this 22nd day of July 1975.

Clerk

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—JUVENILE DIVISION

In the Interest of

JOHN VITALE,
A Minor

No. 74 J 019898

REPORT OF PROCEEDINGS had at the hearing of the
above-entitled cause before the Honorable JOSEPH C.
MOONEY, Judge of the Circuit Court of Cook County, Illinois,
Juvenile Division, on the 9th day of June, 1975.

PRESENT:

MR. BERNARD CAREY, State's Attorney,
By: MRS. MARVA COHEN and
MR. MAURICE DORE,
Assistant State's Attorneys,
Appeared for the State;

MR. LAWRENCE G. DIRKSEN,
Attorney at Law,
Appeared for the Minor Respondent.

[R. 68]
[R. 69]

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* * * * *

THE COURT: Well, nothing I have heard here this afternoon changes the conclusion I have reached. It may be erroneous, it may not. But I assume that in light of the fact, in light of Section 3-3, the provisions of Section 3-3 of Chapter 38, and the pertinent sections of 3-4 (b) (1) of the same section, Chapter 38, that at the time of the commencement of the prosecution of the traffic offense against the Respondent, several offenses were known to the prosecuting officer. That is, the prosecution knew of the deaths of the individual named in the petition filed herein. And that the statute required the several offenses to be prosecuted in a single prosecution. And that all of the elements of proof imposed upon the State could have been presented in a single trial of all charges. That all charges could have been presented in a single prosecution in the Juvenile Court of Cook County. The Court finds that our statutes are clear in controlling herein and that the various test mentioned in Ashe and Waller, namely collateral estoppel, same transaction, same evidence, need not be applied here. Accordingly, prosecution of the offense charged in this petition is barred pursuant to Chapter 38, Section 3-4 (b) (1). The petition is dismissed and the case closed. That's the order.

MR. DORE: Thank you. The State is going to ask leave of Court to appeal.

THE COURT: Certainly. Thank you.

(Which were all the proceedings had in the
above-entitled case on said date.)

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STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION
CASE NO. 74-19898

PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF,
vs.
JOHN VITALE, DEFENDANT(S).

NOTICE OF APPEAL

An Appeal is hereby taken from the Order or Judgment described below:

1. Court to which Appeal is taken:

APPELLATE COURT OF ILLINOIS
FOR THE FIRST DISTRICT

2. Name of Appellant:

PEOPLE OF THE STATE OF ILLINOIS

3. Name of Appellant's attorney on Appeal and address to which notices shall be sent:

BERNARD CAREY
State's Attorney of Cook County
Room 500
Chicago Civic Center
Chicago, Illinois 60602

4. Date of Order:

June 9, 1975.

5. Order appealed from:

APPEAL FROM ORDER OF JUDGE DISMISSING
PETITION AFTER he held that a plea in Traffic Court estopps
a subsequent prosecution of a Delinquency petition

BERNARD CAREY
State's Attorney of Cook County

MAURICE M. DORE

Maurice M. Dore

BY: Assistant State's Attorney

DATE: June 20, 1975

(Notice of service omitted in printing.)

IN THE APPELLATE COURT
FIRST DISTRICT, ILLINOIS.

No. 62870

In the Interest of John M. Vitale, a minor

PEOPLE OF THE STATE OF ILLINOIS, APPELLANT

vs.

JOHN M. VITALE, A MINOR, APPELLEE

APPEAL FROM COOK CIRCUIT

I, Gilbert S. Marchman, Clerk of the Appellate Court, within and for the First District of the State of Illinois, and Keeper of the records, files and seal thereof, do hereby certify that the above and foregoing Transcript of Record filed on October 24, 1975 and marked 62870 is volume 1 of the record consisting of 1 volumes which constitutes the complete record filed in said cause in said Appellate Court.

In Testimony whereof, I have hereunto set my hand and seal of said Court, at Chicago, Illinois, this 17th day of June A.D. 1977.

/s/ Gilbert S. Marchman
Clerk of the Appellate Court,
First District, Illinois

IN THE
SUPREME COURT OF ILLINOIS

No. 49326

In Re JOHN M. VITALE, a Minor, 71 Ill.2d 229, 375 N.E.2d 87 (1978):

(The court's opinion of April 3, 1978, together with the dissenting opinion of the same date, is reproduced in full as Appendix A of the Petition for Certiorari in the present case. It will be found at pages A1 through A22 of the Petition).

IN THE
APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT
No. 62870

*IN THE INTEREST OF JOHN M. VITALE, a Minor, 44
Ill.App.3d 1030, 357 N.E.2d 1288 (1977):*

(The court's opinion of December 30, 1976 is reproduced in full as Appendix B of the Petition for Certiorari in the instant case. It will be found at pages B1 through B10 of the petition).

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 27, 1978

James S. Veldman, Esq.
Room 568
Richard J. Daley Center
Chicago, IL 60602

Re: Illinois
v. John M. Vitale
No. 78-2

Dear Mr. Veldman:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Supreme Court of Illinois to consider whether its judgment is based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U.S. 33 (1972). Mr. Justice White and Mr. Justice Blackmun would grant certiorari and set the case for oral argument.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By EDWARD H. FAIRCLOTH
Edward H. Faircloth
Assistant

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OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ILLINOIS
SPRINGFIELD
62706

March 22, 1979

Hon. William J. Scott
Attorney General
188 W. Randolph Street
Chicago, IL 60601

Re: People State of Illinois, appellant, vs.
John M. Vitale, a Minor, appellee No. 49326

Dear Mr. Scott:

The Supreme Court today made the following announce-
ment concerning the above entitled cause:

In compliance with the mandate of the Supreme Court
of the United States, it is hereby certified that the judgment
of this Court as expressed in its opinion in this cause is
based upon federal constitutional grounds.

Very truly yours,

Clerk of the Supreme Court

CLW: jae

cc: Bernard Carey
Lawrence G. Dirksen
Michael Rodak, Jr.

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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C., 20543

October 1, 1979

Melbourne A. Noel, Jr., Esq.
Assistant Attorney General
188 W. Randolph St., Suite 2200
Chicago, Illinois 60601
RE: *Illinois v. John M. Vitale*
No. 78-1845

Dear Mr. Noel:

The Court today took the following action in the above
case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time require-
ments and procedures under the rules.

The additional docketing fee of \$50, Rule 52(a), is due
and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By JUNE M. HOFFMANN
(Miss) June M. Hoffmann
Assistant Clerk

Enclosures